

BOARD OF ADJUSTMENT REPORT



MEETING DATE: 8/3/2005

ITEM No. _____

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT Berkley Residence
(6-BA-2005)

REQUEST Request to approve a Variance from Article V. Section 5.5.204.E.3 regarding the rear yard setback.

OWNER Glenn & Amy Berkley

APPLICANT CONTACT Michael R Karber
Cates Hanson PlcLC
480-905-3177

LOCATION 9478 E Cortez Street, near the Northwest corner of 96th Street and Cholla Street, being Lot 15 within the Alamosa Estates residential area



CODE ENFORCEMENT ACTIVITY None, the addition to the building that is the subject of the variance presently exists. When the addition was built in 1999, the contractor obtained a building permit, however all of the required inspections were not obtained and the construction extended into required setbacks beyond what was shown in the permit. The City has denied the applicant issuance of the final building permit pending resolution to the setback violation.

PUBLIC COMMENT The applicant has contacted approximately 20 neighbors within 300 feet of the site. No public comment has been received on this case. A letter of support from the Alamosa Estates Home Owners Association was received.

ZONE Single Family Residential in a Planned Community District (R1-35 PCD). Case 11-ZN-1973 established the site as R1-43 PCD. Case 65-ZN-1993 rezoning for the area to R1-35 PCD and provided amended development standards for lot area from 35,000 to 15,000 square feet, lot width from 135 to 100 feet and front yard setback from 40 to 25 feet. No change was provided to the required 15-foot side yard and 35-foot rear yard setback requirements. Case 12-PP-1994 approved the 21 lot Alamosa Estates plat in 1994.

ZONING/DEVELOPMENT CONTEXT The site is located in the Alamosa Estates residential subdivision near the East Cactus Road area of the City. This site abuts R1-35 zoned

CONTEXT	properties on the east and south and R1-18 and R1-7 zoning on the north and west sides respectively. Open space and drainage easements tracts are situated along the west, northwest and southwest sides of the site.
ORDINANCE REQUIREMENTS	Section 5.204.E.3 Rear Yard, There shall be a rear yard having a depth of not less than thirty-five (35) feet. The requested variance of 33 inches (2 feet 9 inches) would result in a modified rear yard setback of approximately 32 feet, 3 inches.
DISCUSSION	The subject “flag shaped” lot is considered to contain rear property lines along both the west and north sides of the lot. After the home was built and purchased by the applicants, an addition for an office/playroom was placed onto the northwest corner of the home that encroached into both the west and north side yards. The maximum encroachment into the setback requirement is approximately 33 inches (2 feet 9 inches) and comprises the two corners of the building addition only, amounting to 8 and 10 square feet on the west and north sides respectively.
FINDINGS	<ol style="list-style-type: none">1. That there are special circumstances applying to the property referred to in the application, which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address: The applicants indicate that amended development standards were applied to lots in this area that permitted a reduced lot area on this “flag shaped” site of 22,032 square feet. No corresponding reductions in the required rear yard setback were provided. In addition, the City has applied the required rear setback requirement to both the west a north property lines. If the western boundary were considered as a side yard, only a 15-foot setback would be required, leaving only the northern side requiring a setback variance. The applicants indicate that the irregularly shaped, reduced sized lot without a corresponding reduction of setback requirements substantially limits the development of the site and support the setback variance. Staff feels that minor modification to the building can be made to the building to meet required setbacks.2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district: The applicants indicate that the building envelope on the subject lot is substantially smaller than other R1-35 zoned parcels in this area, reducing their ability to use the site in the same manner as other property owners of similar lots. The requested variance would allow a minimal increase in the present buildable area on the lot and will allow the site to be more in conformance with the size of the building envelopes on other R1-35 lots. Other adjoining lots, although containing equal size, are not irregularly shaped as

the subject lot and do not have similar building envelope limitations. The floor area of the home is not out of character with the size of home in the vicinity. Staff notes that the setback requirements were established for the area prior to the addition occurring to the existing home.

3. That special circumstances were not created by the owner or applicant:

The applicants indicate that the difficult lot development circumstances were established in the original platting and development of the lot which contains an irregular shape, double rear yard setback requirement and a reduced lot area without a corresponding property line setback reduction. Staff notes that the addition was added to the property while owned by the applicants, even though the contractor of the addition failed to obtain all of the required City inspections concerning the addition, likely resulting in an infraction in required building setbacks.

4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:

The applicants indicate the variance is minimal (maximum of 33") and is for the corners of the building addition only amounting to 18+/- square feet. Also the encroachments are not easily visible or affect adjoining properties or streets. No objections have been received from neighbors.

STAFF CONTACT

Al Ward, AICP
Report Author
Phone: 480-312-7067
E-mail, Award@ScottsdaleAZ.gov

Kurt Jones, AICP
Current Planning Director
Phone: 480-312-2524
E-mail: Kjones@ScottsdaleAZ.gov

ATTACHMENTS

1. Project Description and Justification
2. Context Aerial
3. Aerial Close-up
4. Zoning Map
5. Photographs
6. Correspondence from HOA
7. Development Standards
8. Final Plat for Alamosa Estates
9. Proposed Site Plan



July 1, 2005

City of Scottsdale
Board of Adjustment
C/O Planning and Development Services Department
7447 E. Indian School Road
Suite 105
Scottsdale, AZ 85281

Re: Narrative for Glen and Aymie Berkley Variance Request
9478 E. Cortez St, Scottsdale, AZ 85260

Dear Chairman and Board Members.

Owners Glenn and Aymie Berkley purchased their Scottsdale home on August 21, 1996. A few years after moving in, in the fall of 1999, the Berkley's hired a contractor to construct a small addition to enlarge an office in the northwest corner of the residential structure and add a play room on the north (rear) elevation.

Unbeknownst to the Berkley's, their contractor applied for a building permit but completed the addition without calling for many of the required inspections. *See*, Exhibit A. Only the new foundation for the addition and the gas line were inspected and approved by the City. However, shortly after learning that many required inspections had not been completed, the Berkley's hired a licensed structural engineer to inspect the addition and perform a structural analysis. The addition was eventually determined to meet building code standards. *See*, Exhibit B.

The Berkley's then sought to obtain an approved building permit for the addition but discovered, again unbeknownst to the Berkleys at the time, that the contractor had constructed the addition in such a manner as to cause a small portion of northwest corner of the office portion of the addition and the northern-most corner of the play room portion of the addition to encroach slightly into the thirty-five (35) foot rear set-back as required per City Code. *See*, Site Plan. The furthest encroachment is by the northern-most corner of the play room addition and consists of 2.7 feet or approximately 33 inches. *See*, Survey, Exhibit C. Because of these encroachments, the Berkleys are unable to obtain building permit approval for the addition.

6-BA-2005
7/1/2005

F a m i l y • C i v i l • C r i m i n a l

Dwane M. Cates • 480.905.3117 • Max Nicholas Hanson

6617 N. Scottsdale Rd. • Suite 102 • Scottsdale, AZ 85250 • fax: 480.905.3166 • www.azlawyer-firm.com

Michael R. Karber, Associate Attorney

Denessa Davis, Legal Assistant

ATTACHMENT #1

Before requesting this variance, the Berkley first attempted to secure a boundary line adjustment with their neighbor to the north. The Berkleys' incurred significant expenses in obtaining the surveys and legal services necessary to prepare the paperwork for a lot line adjustment. Unfortunately, their neighbor ultimately rejected the proposal. The Berkleys' now have no other recourse but to seek a variance to the setback requirements.

The Berkleys contend that they meet the criteria for a variance under the provisions of § 1.804 of the Scottsdale Basic Zoning Ordinance as follows:

Criteria (A)(1) Special Circumstances Applicable o the Property.

The "special circumstances" applicable to the Berkley parcel include both the size and shape of the parcel. Though zoned R1-35, the Berkely parcel is only 22,032 square feet in size and does not meet the 35,000 square foot minimum lot size for the applicable zone. The Berkley parcel is thereby only 62% of the size of similarly zoned parcels. Because of its substantially smaller size, the Berkley parcel does not enjoy the same "building envelope" or "buildable area" enjoyed by other R1-35 zoned parcel which meet the minimum lot size. In addition, the Berkley parcel is irregularly shaped, having a narrower "stem" from its cul- de-sac access point that widens out towards the "rear" of the lot. The "rear yard" of the Berkley lot is rather difficult to determine, and arguably could be either the western or the northern property line. For reasons unknown to the Berkleys, the City has apparently applied the 35 foot "rear yard" setback of the R1-35 zone to both the western and northern property lines. The "side yard" setback in the R1-35 zone is 15 feet. Thus, because of the irregularly shaped lot, the Berkley parcel does not enjoy the same "building envelope" or "buildable area" enjoyed by other R1-35 zoned parcels which are more conventionally shaped.

Criteria (A)(2) A Variance is Necessary and Does Not Grant Special Privilege.

The requested variance is necessary to preserve the privileges and rights of the Berkleys to enjoy a residence of similar size and amenity with those built upon other parcels zoned R1-35 and not irregularly shaped. The encroachments into the rear setbacks are minimal, and consist only of structural corners, as opposed to entire walls. The Berkleys have sought, at substantial expense, other means to remedy the setback encroachments and have exhausted these means before applying for a variance. The approval of the requested variance will not constitute a grant of "special privilege" for the Berkleys because the "building envelope" on their lot is already substantially smaller than that upon other R1-35 zoned parcels which are not irregularly shaped. The requested minor setback encroachments which would allow the Berkleys a minimal increase the buildable area upon their parcel will not result in any special privilege because the increase does not exceed the buildable area on a "standard" sized and shaped R1-35 parcel.

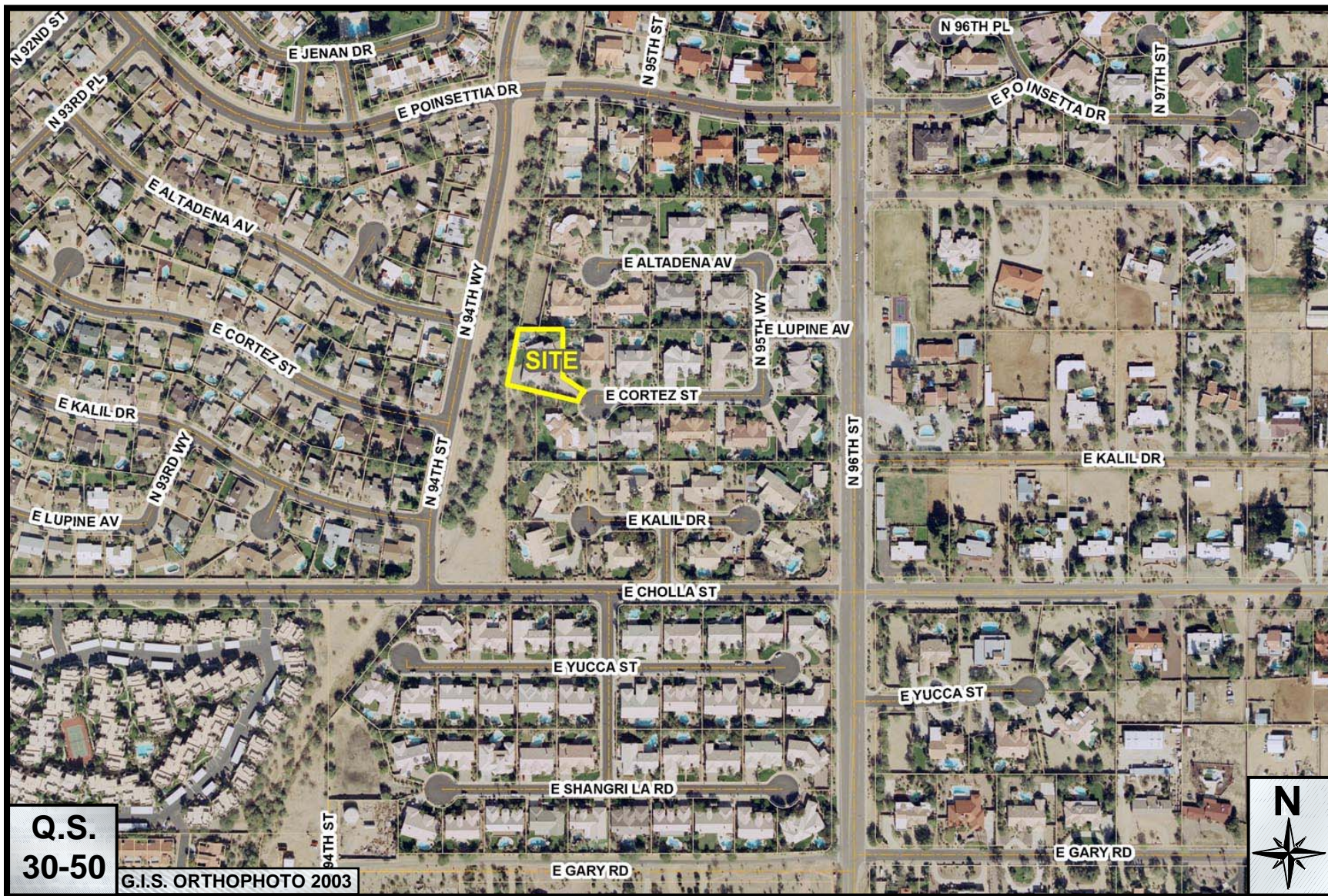
Criteria (A)(3) The Special Circumstances Were Not Self Imposed.

The special circumstances relating to the Berkley parcel's size and shape were not created or self-imposed by the Berkleys, but rather by the person or persons who surveyed and subdivided the subdivision known as Alamosa Estates, and the City of Scottsdale, which approved the subdivision and the layout of the lots.

Criteria (A)(4) The Variance Will Not Be Detrimental

The requested variance is minimal in nature and involves the minor encroachment of two building corners into a relatively large rear yard setback. The encroachments are not visible from the public way, and viewable only by immediately adjacent neighbors who are not expected to raise any concerns. There is no impact upon the public welfare in general. Moreover, consider that current City regulations would allow the Berkleys to construct a separate accessory building (such as an office, workshop or guest house) which encroaches upon up to 30% of the entire rear yard, with only a 2 foot setback from the rear property line. *See*, Scottsdale Basic Zoning Ordinance §7-200(A)(4). It is only because the Berkleys have constructed a connected small addition to the primary residential structure that the encroachment is prohibited by the zoning code.

In conclusion, based upon the information and contentions referenced above, the Berkley variance meets each of the applicable criteria for approval of the requested variance. The Berkleys thereby respectfully request that the Board of Adjustment vote to APPROVE this variance.



Q.S.
30-50

G.I.S. ORTHOPHOTO 2003

Berkley

6-BA-2005

ATTACHMENT #2



Q.S.
30-50

G.I.S. ORTHOPHOTO 2003

Berkley

6-BA-2005

ATTACHMENT #2A



6-BA-2005

ATTACHMENT #4





6-BA-2005
7/1/2005



6-BA-2005
7/1/2005

6-BA-25

J L C

Joseph L. Carlo, Sr.

President

Alamosa Estates

Home Owner's Association

July 15, 2005

VIA FAX & MAIL

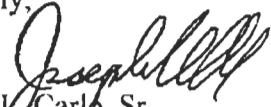
Al Ward
City of Scottsdale
Planning & Development Services
7447 E Indian School Road #105
Scottsdale, AZ 85252

Re: 9478 E Cortez Street
Case: Berkley
Case# 6-BA-2005

Dear Mr. Ward,

I am writing in regard to the request for variance. As president of the Alamosa Estates Home Owners Association, the HOA does not think the variance affects the subdivision and supports the request.

Sincerely,



Joseph L. Carlo, Sr.
President
Alamosa Estates Home Owners Association

Cc: Cates & Hanson, P.L.C.
Berkley, Glenn & Amie

ATTACHMENT #6

DEVELOPMENT STANDARDS

Date Created: 11/23/2004

SUBDIVISION NAME: **Alamos Estates**

APPROVED

CASE #: 47-PA-94

11/23/2004

ZONING: R1-35 PCD

VERSION:

DATE

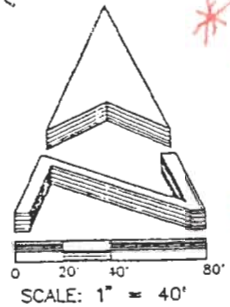
APPROVED BY

	ORDINANCE REQUIREMENTS	AMENDED STANDARDS	MAXIMUM ESLO REDUCTION %
A. MINIMUM LOT AREA	35,000sf	15,000sf	
B. MINIMUM LOT WIDTH			
1. Standard Lot	135'	100'	
2. Flag Lot		20'	
C. MAXIMUM BUILDING HEIGHT	30'	24'	
D. MINIMUM YARD SETBACKS			
1. FRONT YARD			
a) FRONT (to face of building)	40'	25'	
b) FRONT (to face of garage)	40'	25'	
c) FRONT (corner lot, side street)	40'	25' (1)	
d) FRONT (corner lot, adjacent to key lot, side street)	40'	25'	
e) FRONT (double frontage)	40'	25'	
2. SIDE YARD			
a) Minimum	15'	15'	
b) Minimum aggregate	30'	30'	
3. REAR YARD			
a) Standard Depth	35'	35'	
b) Min. Depth (% of difference which can be occupied)			
E. DISTANCE BETWEEN BUILDINGS (MINIMUM)			
1. Accessory & Main	10'	10'	
2. Main buildings on adjacent lots	30'	30'	
F. MAXIMUM WALL HEIGHT			
1. FRONT	3'	3'	
2. SIDE	8'	8'	
3. REAR	8'	8'	
4. CORNER side not next to key lot	8' on PL	8'	
5. Corral fence height (on property line)	6' on PL	N/A	
G. DEVELOPMENT PERIMETER SETBACKS			
H. APPLICABLE ZONING CASES	S1-ZN-93, ORD. 2622& 65-ZN-93, ORD. 2639		

I. NOTES & EXCEPTIONS

*(1) Except lots 10 & 11 require 15'

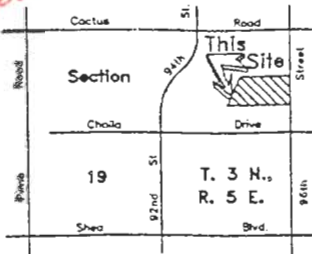
S. 30-50



* Note
Need 24136
Site plans for
Planning Eng
Review -
Johanne

* No On site
Grading plans
has been submitted
or approved

"Scottsdale Vista No. 2"
Book 211, Page 16, M.C.R.



FINAL PLAT OF ALAMOSA ESTATES

A SINGLE FAMILY SUBDIVISION
OF THE NORTHEAST QUARTER OF
SECTION 19, T.3N., R.5E., G.&S.R.B.&M.,
MARICOPA COUNTY, ARIZONA

DEDICATION:

State of Arizona)) SS
County of Maricopa)

KNOW ALL MEN BY THESE PRESENTS:

THAT, ACM LOTS, INC., AN ARIZONA CORPORATION, AS OWNER, HAS SUBDIVIDED UNDER THE NAME OF "ALAMOSA ESTATES" A SUBDIVISION LOCATED IN A PORTION OF THE NORTHEAST QUARTER OF SECTION 19, T-3-N, R-5-E, AS SHOWN PLATTED HEREON, AND HEREBY PUBLISHED THIS PLAT AS AND FOR "ALAMOSA ESTATES" AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, TRACTS AND STREETS CONSTITUTING SAME AND THAT EACH LOT, EACH TRACT AND EACH STREET SHALL BE KNOWN BY THE NUMBER, LETTER OR NAME THAT IS GIVEN TO EACH RESPECTIVELY ON THIS PLAT AND THAT ACM LOTS, INC., AN ARIZONA CORPORATION, AS OWNER, HEREBY DEDICATES TO THE PUBLIC STREETS AND EASEMENTS SHOWN HEREON AND INCLUDED IN THE ABOVE DESCRIBED PREMISES. TRACT A IS HEREBY CONVEYED TO THE PROPERTY OWNERS ASSOCIATION AND IS HEREBY DECLARED AS PRIVATE ACCESSWAYS FOR THE USE OF PROPERTY OWNERS WITHIN "ALAMOSA ESTATES" AND THEIR ASSIGNS AND FOR EMERGENCY AND SERVICE VEHICLES. TRACTS B AND C ARE HEREBY CONVEYED TO THE CITY OF SCOTTSDALE FOR DRAINAGE CONVEYANCE AND RETENTION PURPOSES, WITH MAINTENANCE RESPONSIBILITIES BEING THAT OF THE PROPERTY OWNERS ASSOCIATION. ALL DRAINAGE AND OPEN SPACE EASEMENTS ARE HEREBY DEDICATED TO THE CITY OF SCOTTSDALE WITH MAINTENANCE RESPONSIBILITY BEING THAT OF THE PROPERTY OWNERS ASSOCIATION. THE PROPERTY OWNERS ASSOCIATION SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE DECORATIVE PERIMETER WALLS ALONG THE EASTERN AND WESTERN RIGHT-OF-WAY AND PROPERTY LINES RESPECTIVELY. THE PROPERTY OWNERS ASSOCIATION SHALL ALSO MAINTAIN THE DECORATIVE WALLS ALONG LUPINE AVENUE.

IN WITNESS WHEREOF, ACM LOTS, INC., AN ARIZONA CORPORATION, AS OWNER, HAS HERE UNTO CAUSED ITS CORPORATE NAME TO BE AFFIXED BY THE UNDERSIGNED OFFICER, THERE UNTO DULY AUTHORIZED THIS 14 DAY OF JULY, 1994.

BY: [Signature]
IT'S: Authorized Agent

NOTES:

1. CONSTRUCTION WITHIN UTILITY EASEMENTS SHALL BE LIMITED TO UTILITIES, AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING.
2. THIS SUBDIVISION IS ON THE CITY OF SCOTTSDALE WATER SYSTEM, WITH HAS A CERTIFICATION OF ASSURED WATER SUPPLY.
3. THE STREETS WITHIN THIS SUBDIVISION SHALL BE PRIVATE STREETS, TO BE OWNED AND MAINTAINED BY THE PROPERTY OWNERS ASSOCIATION. NORMALLY, THE CITY OF SCOTTSDALE WILL NOT ACCEPT DEDICATION OF THE STREETS TO THE PUBLIC IN ORDER TO RELIEVE THE PROPERTY OWNERS ASSOCIATION OF STREET MAINTENANCE RESPONSIBILITIES.
4. WHEN AN EASEMENT LIES WITHIN THE BOUNDARY OF A SUBDIVISION LOT, MAINTENANCE OF THE EASEMENT IS THE RESPONSIBILITY OF THE LOT OWNER.
5. THOSE AREAS DESIGNATED AS COMMON AREAS SHALL NOT BE ACCEPTED FOR MAINTENANCE OR OWNERSHIP BY THE CITY WITHOUT THE EXPRESSED ACTION OF THE CITY COUNCIL. FAILURE TO MAINTAIN COMMON AREAS COULD RESULT IN A CIVIL ACTION BROUGHT BY THE CITY FOR COSTS INCURRED BY THE CITY FOR SAID MAINTENANCE.

ACKNOWLEDGEMENT:

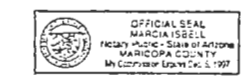
State of Arizona)) SS
County of Maricopa)

ON THIS 14th DAY OF JULY, 1994, BEFORE ME THE, UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED

WHO ACKNOWLEDGED HIMSELF/HERSELF TO BE AN OFFICER OF ACM LOTS, INC., AN ARIZONA CORPORATION, AND THAT AS SUCH OFFICER BEING AUTHORIZED SO TO DO EXECUTE THE FOREGOING INSTRUMENT FOR THE PURPOSE THEREIN CONTAINED BY SIGNING THE NAME OF THE CORPORATION, BY HIM/HERSELF, AS SUCH OFFICER.

IN WITNESS WHEREOF:
I HEREBY SET MY HAND AND OFFICIAL SEAL

BY: [Signature]
My commission expires: [Date]



RT TAZ
294
Book map
217 25
2P Code
85260

6. BASIS OF BEARING: THE BEARING OF N 00 00' 00" E, FOR THE EAST LINE OF SECTION 19, TOWNSHIP 3 NORTH, RANGE 5 EAST, G.&S.R.B.&M. (ALSO BEING THE CENTERLINE OF 96TH STREET).
7. ALL REQUIRED RETENTION AND DRAINAGE AREAS (TRACTS "B" & "C") SHALL BE COMMON AREA FOR THE USE OF ALL HOMEOWNERS AND SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION.
8. BUILDING HEIGHTS (ROOF RIDGE LINES) FOR ALL LOTS SHALL NOT EXCEED 24' AS MEASURED FROM THE PRE-DEVELOPMENT EXISTING GROUND.
9. FLAGPOLES, IF PROVIDED, SHALL BE ON PIECE CONICAL TAPERED.
10. ALL POLE MOUNTED LIGHTING SHALL BE A MAXIMUM OF 20' IN HEIGHT.
11. SIGNS REQUIRE SEPARATE PERMITS AND APPROVALS.

APPROVALS:

APPROVED BY THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA THIS 30th DAY OF JULY, 1994.

BY: [Signature] Mayor
ATTEST: [Signature] City Clerk

I HEREBY CERTIFY THAT THIS PLAT SUBSTANTIALLY CONFORMS TO THE APPROVED PRELIMINARY PLAT.

BY: [Signature] 7-25-94
Project Review Director Date

I HEREBY CERTIFY THAT ALL ENGINEERING CONDITIONS AND REQUIREMENTS OF THE CITY CODES HAVE BEEN COMPLIED WITH.

BY: [Signature] 7-25-94
Date

STATE OF ARIZONA) SS
County of Maricopa)
I hereby certify that the within instrument was filed and recorded at request of
First American
7-28-94 11:51
in Book 380
on page 49
[Signature]

ATTACHMENT #8

